

(e) *Regular discharge.* When a veteran, either competent or incompetent, is given a regular discharge or release, the full rate, including any allowance for regular aid and attendance will be restored effective the date of release from the hospital, subject to prior payments. The award will be based on the most recent rating and, where the award was reduced under § 3.551(b), will include, in the case of a competent veteran, any amounts withheld because of hospitalization. The amount withheld for an incompetent veteran will not be authorized until the expiration of 6 months following a rating of competency by VA. Any institutional award will be discontinued effective date of last payment, as provided in § 3.501(j). Where an apportionment made under § 3.551(c) is not continued, the apportionment will be discontinued effective the day preceding the date of the veteran's release from the hospital, or, if adjusted, effective the date of the veteran's release from the hospital, unless an overpayment would result. In the excepted cases, the awards to the veteran and apportionee will be adjusted as of date of last payment.

(Authority: 38 U.S.C. 5503)

(f) *Types of discharges.* A discharge is considered regular if it is granted because of having received maximum hospital benefits. A discharge for disciplinary reasons or because of the patient's refusal to accept, neglect of or obstruction of treatment; refusal to accept transfer, or failure to return from authorized absence, is considered irregular.

[27 FR 7678, Aug. 3, 1962, as amended at 27 FR 8794, Sept. 1, 1962; 38 FR 34115, Dec. 11, 1973; 39 FR 34532, Sept. 26, 1974; 40 FR 45169, Oct. 1, 1975; 44 FR 22721, Apr. 17, 1979; 44 FR 45942, Aug. 6, 1979; 50 FR 50616, Dec. 11, 1985]

§ 3.557 Incompetents; estate over \$1,500 and institutionalized.

(a) Where a veteran having neither spouse, child, nor dependent, is being hospitalized by VA and is rated incompetent by VA, the pension of such veteran will be subject to reductions as provided in § 3.551.

(Authority: 38 U.S.C. 5503)

(b) Effective December 1, 1959, where a veteran;

(1) Is rated incompetent by VA, and
(2) Has neither spouse nor child, and
(3) Is hospitalized, institutionalized or domiciled by the United States or any political subdivision, with or without charge, and

(4) Has an estate, derived from any source, which equals or exceeds \$1,500, further payments of pension, compensation or emergency officer's retirement pay will not be made, except as provided in paragraph (d) of this section, until the estate is reduced to \$500. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission.

(Authority: 38 U.S.C. 5503)

(c) For veterans subject to paragraph (b) of this section, the value of the veteran's estate shall be computed under the provisions of § 13.109 of this title.

(Authority: 38 U.S.C. 501)

(d) Payment of pension, compensation or emergency officers' retirement pay to a veteran subject to the provisions of paragraph (b) of this section will be discontinued the last day of the month of admission or the last day of the month in which the veteran's estate equals or exceeds \$1,500, whichever is later. All or any part of the benefit not paid to the veteran may be apportioned for his or her dependent parents on the basis of need as determined by the Veterans Services Officer. If the veteran is not hospitalized by the Department of Veterans Affairs there may be paid out of any remaining amounts so much of the pension, compensation or emergency officers' retirement pay as equals the amount charged the veteran for his or her current care and maintenance in the institution in which the treatment or care is furnished, but not more than the amount determined to be the proper charge.

(Authority: 38 U.S.C. 5503)

(e)(1) When the discontinuance of payments under this section results or would result in financial hardship for the veteran, discontinuance may be waived to avoid or reduce such hardship. Waiver of discontinuance under

this paragraph may be granted more than once in any calendar year but may not exceed a total of 60 days in any calendar year.

(2) The veteran, or any person or organization acting on the veteran's behalf, is authorized to request such waiver.

(3) For purposes of this paragraph, financial hardship shall be held to exist for any month in which a veteran's liabilities during that month exceed the sum of the veteran's income and liquid assets during that month.

(4) Waivers under this paragraph are not to be granted as an administrative expediency or where liquid assets are readily available to meet current expenses.

(Authority: 38 U.S.C. 5503)

[26 FR 1598, Feb. 24, 1961, as amended at 27 FR 7678, Aug. 3, 1962; 36 FR 25225, Dec. 30, 1971; 40 FR 45170, Oct. 1, 1975; 45 FR 64910, Oct. 1, 1980; 50 FR 50616, Dec. 11, 1985; 53 FR 23237, June 21, 1988]

CROSS REFERENCES: Veterans disability pension. See § 3.454(c). Reductions and discontinuances; general. See § 3.500. Reductions and discontinuances; veterans. See § 3.501. Amounts withheld or not paid incompetent veteran. See § 3.1007. Estate \$1,500. See § 13.108 of this chapter. Determination of value of estate. See § 13.109 of this chapter.

§ 3.558 Resumption and payment of withheld benefits; incompetents \$1,500 estate cases.

(a) Where payment has been discontinued by reason of § 3.557(b), it will not be resumed during hospitalization except as provided in § 3.557(e) or paragraph (b) of this section until proper notice has been received showing the estate is reduced to \$500 or less. Payments will not be made for any period prior to the date of which the estate was reduced to \$500 or less.

(Authority: 38 U.S.C. 5503)

(b) Payments for the veteran will be resumed and apportionment awards discontinued under the applicable provisions of § 3.556(a), (d), and (e) upon authorized absence from the hospital for 30 days or more or a regular or irregular discharge or release. Care and maintenance payments to an institution will not be made for any period the veteran is not receiving such care and maintenance.

(c) Any amount not paid because of the provisions of § 3.557(b), and any amount of compensation or retirement pay withheld pursuant to the provisions of § 3.551(b) (and/or predecessor regulatory provisions) as it was constituted prior to August 1, 1972, and not previously paid because of the provisions of § 3.557(b), will be awarded to the veteran if he or she is subsequently rated competent by VA for a period of not less than six months.

(Authority: 38 U.S.C. 5503)

[27 FR 7679, Aug. 3, 1962, as amended at 36 FR 25225, Dec. 30, 1971; 38 FR 34116, Dec. 11, 1973; 40 FR 45170, Oct. 1, 1975; 41 FR 18412, May 4, 1976; 50 FR 50617, Dec. 11, 1985; 58 FR 34224, June 24, 1993]

§ 3.559 Resumption—\$1,500 cases where estate includes chose in action.

(a) Where payments have been discontinued because of hospitalization and there exists only a claim against a defunct bank, or other institution, or the entire estate is the subject of litigation, or consists of investments of undetermined value, and there is no income to provide for clothing and other needs, and comforts for the veteran, the Veterans Services Officer may consider the guardian's statement setting forth the facts and estimating what the said claim or chose in action would sell for in the open market. If the Veterans Services Officer is satisfied that the value of the estate does not exceed \$500, he or she will prepare a certificate to that effect. Upon receipt of this certification by the adjudication division, payments will if otherwise in order be authorized effective the first day of the month in which award action is taken.

(b) When the claim is settled or litigation terminated the Veterans Services Officer will again review the case and, if the estate is then \$1,500 or more, will forward an appropriate certification to the adjudication division.

(c) Special cases which do not come within this section or where money is urgently needed should be reported to the Office of the Under Secretary for Benefits.

[26 FR 1598, Feb. 24, 1961, as amended at 40 FR 14570, Oct. 1, 1975; 50 FR 50617, Dec. 11, 1985; 61 FR 20727, May 8, 1996]